

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SCOTT L. STOLLER,

Plaintiff,

V.

STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS.

Defendant.

No. C14-5562 BHS-KLS

## **REPORT AND RECOMMENDATION**

**Noted for: February 27, 2015**

Defendant Washington State Department of Corrections (DOC) moves for summary judgment on Plaintiff Scott L. Stoller’s claim of “deliberate indifference.” Dkt. 12. Mr. Stoller initially filed his lawsuit in Thurston County Superior Court for injuries he sustained after falling at a recreational field at the Clallam Bay Corrections Center (CBCC). DOC removed the case to this Court based on language contained in Mr. Stoller’s complaint that the DOC acted with “deliberate indifference.” Dkt. No. 1-1. The complaint makes no mention of Mr. Stoller’s constitutional rights under the Eighth Amendment but neither does it allege claims of negligence.

Mr. Stoller contends that there are material issues of fact precluding summary judgment. Dkt. 17. He also seeks leave to amend his complaint to remove any federal claim and asks that his case be remanded to Thurston County Superior Court. Dkt. 22. DOC responds that the Court should grant its motion for summary judgment, leaving Mr. Stoller free to pursue his state law claim of negligence in state court. Dkt. 23.

1 For the reasons stated herein, the undersigned recommends that Plaintiff's motion for  
2 leave to amend be GRANTED; Defendant's motion for summary judgment be DENIED as moot  
3 without prejudice to re-filing in state court; and that Plaintiff's motion for remand be GRANTED  
4 and this case remanded to the Thurston County Superior Court.

5 **DISCUSSION**

6 DOC contends that Mr. Stoller's claim of "deliberate indifference" must be dismissed  
7 because: (i) the DOC is a state agency that cannot be held liable for damages under 42 U.S.C. §  
8 1983; and (ii) there is no evidence that Mr. Stoller's constitutional rights were violated. Dkt. 12.  
9 Mr. Stoller acknowledges that a state agency cannot be held liable for damages under 42 U.S.C.  
10 § 1983. He states that he only ever intended to bring a state law claim of negligence and it was  
11 only his ignorance of the legal significance of "deliberate indifference" that led to the initial  
12 removal of this case. Dkts. 17-21. Mr. Stoller also responded to the summary judgment motion  
13 and filed several declarations in support of his argument that issues of material fact remain as to  
14 his claim of negligence. Dkt. 22.

15 **A. Motion to Amend – Dkt. 12**

16 Mr. Stoller requests leave to file an amended complaint replacing "deliberate  
17 indifference" with "negligence," thus stripping the action of any federal claim. Dkt. 22, Exhibit  
18 1.

19 Under Fed.R.Civ.P. 15, this Court must be extremely liberal in considering motions to  
20 amend the pleadings. *See Price v. Kramer*, 200 F.3d 1237, 1250 (9th Cir.2000), *cert. denied*,  
21 531 U.S. 816 (2000). The purpose of the rule is to encourage decisions on the merits rather than  
22 on the precision (or imprecision, as the case may be) of the pleadings. *See Lopez v. Smith*, 203  
23 F.3d 1122, 1127 (9th Cir.2000).

1 In determining whether to grant leave to amend, district courts should look to factors  
2 such as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to  
3 cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by  
4 virtue of the allowance of the amendment, futility of the amendment, etc.” *Foman v. Davis*, 371  
5 U.S. 178, 182 (1962). Not all of these factors apply with equal force; “it is the consideration of  
6 prejudice to the opposing party that carries the greatest weight.” *Eminence Capital LLC v.*  
7 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.2003).

8       DOC fails to show that it will suffer prejudice from the amendment. DOC’s motion for  
9 summary judgment, filed only five months after its removal of this case from state court, seeks to  
10 dismiss with prejudice the same federal constitutional claim that Mr. Stoller seeks to remove  
11 through his amendment. There is also no indication that Mr. Stoller is attempting to manipulate  
12 the forum and in fact, it appears that he is attempting to correct the language of his complaint to  
13 correctly mirror his initial intent to sue for negligence in the state court where he originally  
14 brought his complaint.

15       Accordingly, it is recommended that Mr. Stoller’s motion for leave to amend (Dkt. 22) be  
16 **GRANTED** and that the proposed amendment found at Dkt. 22-1 be docketed as his Amended  
17 Complaint herein.

18       **B. Motion to Remand – Dkt. 22**

19       Mr. Stoller submits that once the federal claim has been removed from his complaint, this  
20 action should be remanded to Thurston County Superior Court, where he filed his original  
21 complaint on June 9, 2014. Dkt. 22. He states that in the “cause of action” section of his  
22 original complaint, he used the term “deliberate indifference” when he meant to use the term  
23 “negligence,” that nowhere in his complaint did he intend to or actually allege a violation of his  
24  
25

1 federal civil rights including 42 U.S.C. § 1983, and the reason he filed his complaint in state  
2 court was because he was alleging only a state law claim of negligence. Dkt. 22.

3 Upon removal, this Court had original jurisdiction under 28 U.S.C. § 1331 based on Mr.  
4 Stoller's allegation of "deliberate indifference" although DOC conceded that Mr. Stoller did not  
5 specifically identify the Eighth Amendment. DOC does not ask that this Court continue to  
6 exercise supplemental jurisdiction over the state negligence claim. Instead, in its motion for  
7 summary judgment, DOC contends that "although mere negligence may support a state tort  
8 claim, it is not actionable under section 1983." DOC seeks summary judgment and contends that  
9 Mr. Stoller can then sue again in state court.

10 28 U.S.C. § 1337(a) gives federal district courts supplemental jurisdiction over all claims  
11 within the same case or controversy as a claim conferring original jurisdiction. Supplemental  
12 jurisdiction is "analyzed on the basis of the pleadings filed at the time of removal without  
13 reference to subsequent amendments." *See, e.g., Sparta Surgical Corp. v. Nat'l Ass'n of Sec.  
14 Dealers*, 159 F.3d 1209, 1213 (9th Cir.1998). Once supplemental jurisdiction exists, it remains,  
15 subject to the discretionary provision for remand in section 1441." *Albingia Versicherungs A.G.  
16 v. Schenker International Inc.*, 344 F.3d 931, 938–38 (9th Cir.2003). 28 U.S.C. § 1337(c) allows  
17 a district court to decline supplemental jurisdiction if it has dismissed all of the claims conferring  
18 original jurisdiction, but does not require it to do so. District courts are given discretion to  
19 exercise or decline supplemental jurisdiction upon consideration of "the values of judicial  
20 economy, convenience, fairness, and comity." *Carnegie–Mellon University v. Cohill*, 484 U.S.  
21 343, 350 (1988). While "in a case in which all federal claims are eliminated before trial, the  
22 balance of these factors will generally point toward declining to exercise jurisdiction over the  
23 remaining state law claims ... this[ ] is not a mandatory rule to be applied inflexibly in all cases."

1 *Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d 709, 715 (9th Cir.1990). Judicial  
2 economy has frequently been privileged over the other factors. *See Schneider v. TRW, Inc.*, 938  
3 F.2d 986, 994 (9th Cir.1990). “It is the district judge who is in the best position to determine  
4 whether enough resources have been expended to make dismissal a waste at any given point.”

5 *Id.*

6 Here, the Court has not expended significant resources in this case. The DOC filed its  
7 motion for summary judgment just five months after removal. Between removal and the  
8 summary judgment motion, the Court entered its Scheduling Order. Dkt. 12. No other Court  
9 actions have been necessary. Certainly, DOC’s motion for summary judgment can easily be re-  
10 filed in the superior court.

12 As noted above, the Court does not find that Mr. Stoller is attempting to manipulate the  
13 forum by eliminating the “deliberate indifference” language from his complaint. Neither DOC  
14 nor Mr. Stoller has submitted arguments regarding comity or convenience, and none are readily  
15 apparent. Therefore, the undersigned recommends that the Court decline to retain supplemental  
16 jurisdiction over the state law tort claims and remand this case to the Thurston County Superior  
17 Court.

19 **C. DOC’s Motion for Summary Judgment – Dkt. 12**

20 DOC moves for summary judgment on two grounds, first that the DOC is not a “person”  
21 for purposes of imposing liability for damages in violation of 42 U.S.C. § 1983, and second that  
22 there is no evidence of a constitutional violation. Dkt. 12. As to the first ground, the Court notes  
23 that when it removed this case to federal court, the State voluntarily invoked the federal court’s  
24 jurisdiction and waived its Eleventh Amendment immunity from suit in federal court. *Embrey v.*  
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1 *King*, 361 F.3d 562 (9th Cir.2004); *Lapides v. Board of Regents of University System of Georgia*,  
2 535 U.S. 613 (2002).

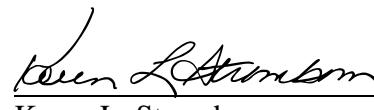
3 Nevertheless and in light of the recommendations that Mr. Stoller be allowed to amend  
4 his complaint to assert a state law negligence claim only and that this case be remanded, it is also  
5 recommended that the Court not reach the merits of Defendants' motion for summary judgment  
6 but instead deny the motion as moot without prejudice to re-filing in state court after remand.  
7

## 8 CONCLUSION

9 Based on the foregoing, the undersigned recommends that Plaintiff's motion for leave to  
10 amend be **GRANTED**; Defendant's motion for summary judgment be **DENIED** as moot  
11 without prejudice to re-filing in state court; and that Plaintiff's motion for remand be  
12 **GRANTED** and this case **remanded** to the Thurston County Superior Court.  
13

14 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
15 Procedure, the parties shall have fourteen (14) days from service of this Report and  
16 Recommendation to file written objections. See also Fed. R. Civ. P. 6. Failure to file objections  
17 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140  
18 (1985). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the  
19 matter for consideration on **February 27, 2015**, as noted in the caption.  
20

21 **DATED** this 2nd day of February, 2015.

22   
23 Karen L. Strombom  
24 United States Magistrate Judge  
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